

**MINUTES RECAP  
MARYSVILLE CITY COUNCIL - REGULAR MEETING  
APRIL 23, 2001**

ORIGINAL

000170

CALL TO ORDER/FLAG SALUTE	7:00 p.m.
ROLL CALL	All present
MINUTES OF PREVIOUS MEETING 1. City Council Regular Meeting, April 9, 2001.	Approved as corrected
AUDIENCE PARTICIPATION Ralph Krutsinger regarding sewer service agreement with the Tribes.	
PRESENTATIONS/PETITIONS/COMMUNICATIONS 1. Presentation of donations from Marysville Rotary and Walmart. 2. Swear in new Police Commander, Robert Lamoureux	
CONSENT AGENDA 1. Approve April 23, 2001 claims in the amount of \$845,531.13; paid by check Nos. 58333 through 58673 with check Nos. 057612, 057846, 047961, 052467, 055459, and 057518 void. 2. Approve Supplement No. 4; R9701 - 128 <sup>th</sup> Street Traffic Signal; Skillings Connolly. 3. Approve Final Plat for Mountain View; PA 9904016. 4. Approve reimbursement in the amount of \$21,497.71 for replacement and oversizing the 18" transmission main for the Plat of Jefferson Hill.	Approved  Approved.  Approved. Approved.
<b>ACTION ITEMS</b>	
<b>REVIEW BIDS</b> None.	
<b>PUBLIC HEARING</b> None.	
<b>CURRENT BUSINESS</b> 1. Grove Street, 67 <sup>th</sup> to 83 <sup>rd</sup> traffic calming (continued from March 26, 2001)  2. Professional Services Agreement, Waterfront Park design services; Hammond, Collier, Wade-Livingstone Associates, Inc. (continued from April 2, 2001)	Approved study by qualified engineer with prior council approval of contract & amount, public hearing when study presented, concurrent letter to WCIA.  Approved contract for \$317,250 with report to council after Task I.
<b>NEW BUSINESS</b> 1. Supplemental Agreement No. 6; Skillings Connolly; R9701 - State Avenue (116 <sup>th</sup> Street - 136 <sup>th</sup> Street) Road Improvements Project. 2. Annual Telemetry Contract for Repair and Maintenance for Water and Wastewater Systems. 3. Loop Annexation; 10% Notice of Intention to Annex; PA 0103018. 4. Robinett Annexation; 10% Notice of Intention to Annex; PA 0102006. 5. SR528 Columbia to 55 <sup>th</sup> Avenue Phase 1 Consultant Contract; Perteet Engineering, Inc.	Approved.  Approved.  Accepted 10% Notice, set boundary for circulation of 60% petition. Accepted 10% Notice, set boundary for circulation of 60% petition. Approved.
<b>LEGAL MATTERS</b> 1. Easement with P.U.D.	Approved.
<b>ORDINANCES AND RESOLUTIONS</b>	
1. A Resolution of the City of Marysville declaring certain items of personal property to be surplus and authorizing the sale or disposal thereof.	Approved Resolution 2032.
<b>INFORMATION ITEMS</b>	
None.	

ADJOURN INTO EXECUTIVE SESSION	11:15 p.m.
RECONVENE INTO REGULAR SESSION	
No Action.	
ADJOURN	11:30 p.m.

000171

**MINUTES  
MARYSVILLE CITY COUNCIL - REGULAR MEETING  
APRIL 23, 2001**

**CALL TO ORDER/FLAG SALUTE**

The regular meeting was convened by Mayor Weiser at 7:00 p.m. in the Council Chambers, and the assemblage joined in the flag salute.

A voice roll call was conducted. Attendance was as follows:

<p>Councilmembers Present:          Dave Weiser, Mayor          Mike Leighan, Mayor Pro Tem          Shirley Bartholomew          Jim Brennick          NormaJean Dierck          Donna Pedersen          Suzanne Smith          John Soriano</p>	<p>Administrative Staff present:          Robert Carden, Chief of Police          Gerry Becker, City Clerk          Gloria Hirashima, City Planner          Grant Weed, City Attorney          Ken Winckler, Public Works Director</p>
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**MINUTES OF PREVIOUS MEETING**

1. City Council regular meeting, April 9, 2001.

Councilmember Dierck requested a verbatim transcript of the dialogue under New Business.

**MOTION** by Dierck, second by Brennick, to approve the minutes of the April 9, 2001 regular council meeting as corrected. Leighan voted nay; all others voted aye; motion carried (6-1).

**MOTION** by Pedersen, second by Leighan, to reconsider the previous action and divide the request for the verbatim transcript and the approval of the minutes into two actions. Dierck and Smith voted nay; all others voted aye; motion carried (5-2).

**MOTION** by Pedersen, second by Leighan, to ascertain if the majority of the council desired that the dialogue under New Business of the April 9 meeting be transcribed verbatim. [An affirmative vote supported the verbatim transcript.] On roll call vote, Leighan, Pedersen and Bartholomew voted nay; all others voted aye; motion carried (4-3).

**MOTION** by Dierck, second by Brennick, to approve the minutes of the April 9, 2001 regular council meeting as corrected. Leighan and Bartholomew voted nay; all others voted aye; motion carried (5-2).

**AUDIENCE PARTICIPATION**

Ralph Krutsinger, 409 148<sup>th</sup> Street NE, Arlington, asked about the city's sewer agreement with the Tribes, questioning whether that would have a negative impact on the capacity that was planned for the UGA. The Mayor responded that this topic would be discussed in depth at the May 7 meeting.

**PRESENTATIONS/PETITIONS/COMMUNICATIONS**

1. Presentation of Donations from Marysville Rotary and Walmart

CORRECTED: SEE 5-7-01 MINUTES s/b Noon Rotary
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Jan Buckner and Lee Hudson of the Marysville Noon Rotary Club presented the city and the Parks Department with a check for \$25,000 for the skateboard park.

Mr. Ballew advised that at its grand opening, Walmart presented a check to the city for \$1,000 for the skateboard park. He noted this was the second donation from Walmart, the first one being a donation of \$1,000 from their Community Foundation for the water tower project.

Councilmembers applauded the donations.

## 2. Swear in new Police Commander, Robert Lamoureux

Mayor Weiser noted that Commander Lamoureux had been with the city for 15 years and had been a sergeant for the last two. He administered the oath of office then recessed the meeting for a short coffee reception so members in attendance could congratulate Commander Lamoureux and welcome him to his new position.

The meeting was then reconvened.

### **CONSENT AGENDA**

1. Approve April 23, 2001 claims in the amount of \$845,531.13; paid by check Nos. 58333 through 58673 with check Nos. 057612, 057846, 047961, 052467, 055459, and 057518 void.
2. Approve Supplement No. 4; R9701 - 128<sup>th</sup> Street Traffic Signal; Skillings Connolly.
3. Approve Final Plat for Mountain View; PA 9904016.
4. Approve reimbursement in the amount of \$21,497.71 for replacement and oversizing the 18" transmission main for the Plat of Jefferson Hill.

**MOTION** by Dierck, second by Smith, to approve consent item 1. Motion carried (7-0).

Regarding item 2, Councilmember Dierck asked if the city had submitted its SAO for the biological assessment. Robin Nelson, Assistant City Engineer, responded that the city did a site-specific biological assessment that was submitted to the State Department of Transportation and concurrently forwarded to National Marine Fisheries. The Sensitive Areas Ordinance was not submitted. The mitigation requirements complied with the SAO.

**MOTION** by Bartholomew, second by Leighan, to approve consent item 2. Motion carried (7-0).

Regarding item 3, Councilmember Dierck noted the neighbors had one meeting with the developer; a second meeting had been promised but did not happen. She suggested delaying approval until that meeting occurred. Councilmember Leighan pointed out that the applicant had fulfilled all conditions required by the city for approval.

**MOTION** by Leighan, second by Bartholomew, to approve consent item 3. Dierck and Smith voted nay; all others voted aye; motion carried (5-2).

Regarding item 4, Councilmember Smith asked if the pipe would have been replaced and upsized if no development had occurred. Mr. Winckler said it would have had to be replaced eventually and needed to be upsized to an 18" line to accommodate future service. The city took advantage of this project to accomplish this. The funds came from the capital facilities fees which were set aside every year to allow for such opportunities. Councilmember Leighan noted that Councilmember Smith's family may have an interest in this property.

**MOTION** by Bartholomew, second by Brennick, to approve consent item 4. Motion carried (6-0-1) with Smith abstaining due to a possible conflict of interest.

## **ACTION ITEMS**

### **Review Bids**

None.

### **Public Hearing**

None.

### **Current Business**

#### 1. Grove Street, 67<sup>th</sup> to 83<sup>rd</sup> traffic calming (continued from March 26, 2001)

Mr. Carter presented the agenda materials, noting the Fire Department's simulation of slowing for speed bumps added 50 seconds to their response time. The city's insurance carrier recommended a speed study to ensure the speed limit was appropriate and the markings and signage were in compliance with the *Manual on Uniform Traffic Code Devices*. Staff's recommendation was to authorize the engineering study to determine the appropriate speed limit and recommend pavement markings and signage.

Councilmember Dierck asked about additional stop signs; Mr. Carter stated no intersections met warrants for stop signs.

Councilmember Smith noted the Fire Chief's memo mentioned making the neighbors aware of increased response times resulting from traffic calming measures so they could make an informed decision. She suggested door-to-door delivery of information.

Councilmember Brennick stated he lived on Grove and speeding continued to be a problem.

CORRECTED: SEE 5-7-01  
MINUTES s/b Marysville

Councilmember Pedersen reported that at the last Joint Fire Board meeting they were informed of pending legislation that would mandate response times of 5 minutes or less. The Fire Chief's memo indicated that their trial run with simulated traffic calming added nearly one minute to the response time, bringing it to 6 minutes 50 seconds. For this reason she supported the recommended action with no implementation of further traffic calming measures until the analysis was completed.

Councilmember Soriano expressed support for the recommended action, suggesting that traffic calming could be tried on the downhill side while the traffic study was going on.

Mr. Winckler noted that at the recent Public Works conference, Bellevue gave an excellent presentation of their 3-phase program. Year 1 included education and extremely close enforcement - full weeks of trailer location, senior citizens groups writing license numbers followed by letters from the Police Department. The trailer was removed for a week then put back for two weeks with an officer issuing citations. This was accompanied by a media blitz and door-hangars in the neighborhood. The second year, temporary traffic control devices were installed. This required a 60% approval by the neighbors. The third year, permanent traffic calming devices were installed, also by petition of at least 60% of the neighbors.

The Mayor called for public comments.

Otto Herman, Jr., 7323 Grove Street, said the measures which had been put in place were some help but the problem still existed. He suggested a planted median might slow traffic without slowing emergency vehicles. He did not believe there would be support for raising the speed limit from the existing 25 m.p.h.

Jeff Seibert, 5004 80<sup>th</sup> Street, asked about the alternative speed bumps with spacing that supposedly accommodated fire trucks. Mr. Carter advised that those had proven to be unsuccessful because of the wheel base on the fire trucks.

There being no one further wishing to speak, the Mayor closed the public comment portion of the topic.

Councilmember Pedersen asked about the importance of basing changes on an engineering study. Mr. Weed responded that some revisions to a street profile could be made based on staff's best engineering judgment. From a liability standpoint it would be better to base other types of revisions on a formal study. Mr. Carter advised that the cost of the study was not yet known. Staff would use its consultant roster to get a qualified traffic engineer then bring the contract back for council approval. Mr. Winckler added that the state required that for engineering consultant selection, the dollar amount could not be set beforehand. Council could only give a "not to exceed" figure.

**MOTION** by Dierck to have staff design a median and if that did not work to consider the Bellevue process. Motion died for lack of a second.

Councilmember Bartholomew noted the recommendation of the city's insurance carrier was to conduct the study as recommended.

**MOTION** by Dierck, second by Smith, to not conduct the speed study, but to seek an opinion from WCIA regarding the Bellevue procedure.

Councilmember Pedersen called for a point of courtesy, noting she had already indicated a willingness to place a motion on the floor, was not recognized by the Mayor, and was superseded in place by Councilmember Dierck's motion. Councilmember Smith honored the request for courtesy and withdrew her second.

Motion died for lack of a second.

**MOTION** by Pedersen, second by Brennick, to

- 1) direct that a speed study analysis be prepared by a qualified engineer to determine the appropriate speed limit and review and make recommendations to pavement markings and signage on this section of Grove Street, and
- 2) to have council approve the proposed contract and dollar amount prior to implementation, and
- 3) that when the engineer's report was due that the public be invited to hear the recommendations, and
- 4) to direct a letter to WCIA to obtain their opinion on implementing a process like Bellevue's

Motion carried (7-0).

2. Professional Services Agreement, Waterfront Park design services; Hammond, Collier, Wade-Livingstone Associates, Inc. (continued from April 2, 2001)

Mayor Weiser advised that he and members of the council had received an e-mail message from a citizen suggesting that he should recuse himself from action on this item because of possible interest in the property. Mr. Weed noted that the action before the council was a contractual matter, consideration of a professional services agreement for a park. The mayor would not be eligible to

vote on the issue except in the unlikely event of a tie vote but that was not likely to occur because there were seven councilmembers in attendance. In order to determine if another type of conflict might disqualify the Mayor, he would need to ask several questions. Those questions and the Mayor's answers thereto follow.

Question by Attorney Weed	Response from Mayor Weiser
The e-mail message alleged that the Mayor had some type of business interest or ownership in a business that at one time owned part of the property that the Waterfront Park was planned to go on. Do you know the business entity that owned the park in the '62/'63 timeframe?	A business incorporated under Weiser Lumber Company purchased some of that property in the '61 - '63 timeframe.
Do you now or have you ever had any ownership in Weiser Lumber Company?	No. Weiser Lumber Company was sold. That business, which was a sawmill, was acquired by Danton Russell in '66. I was 17 years old at the time. I have never owned any part of Weiser Lumber Company.
Who were the owners of Weiser Lumber Company?	My father, now deceased, my grandmother, now deceased, and an aunt.
When the property was sold to Danton Russell, did they take over the business entity?	I don't know that they took over Weiser Lumber Company; they took over the assets.
Is the business entity of Weiser Lumber Company still ongoing and is it in any way connected with the Weiser family?	No. Weiser Cedar Sales incorporated in 1969. The principals were my father and aunt. While two of the principals were the same as Weiser Lumber Company, there was a three-year separation between the sale of Weiser Lumber Company and the incorporation of Weiser Cedar Sales.
So Weiser Lumber Company is not currently an ongoing business.	Correct.
In the event the city, as the current owner of the property sought to go back in the chain of title and require assistance in any potential cleanup of the site, would you or anyone in your immediate family have any financial gain or loss from such an action?	Weiser Lumber Company ceased to exist in 1966/76. The only principal still living is my aunt. I don't know how far back an entity could go to tap a "responsible party."
Under the cleanup act, a potentially responsible party is defined as any person or business entity in the chain of title. Have you personally ever been in the chain of title?	No, I never was an officer or stockholder.

Mr. Weed stated that based upon the above disclosures, there was no legal conflict of interest that mandated that the Mayor step down. Also, it was not in the council's purview to make that decision. The Mayor could step down only if he chose to do so.

Mayor Weiser stated that there was little chance of a tie vote and because the action required the expenditure of funds it was questionable whether he could vote to break a tie. He stated he would not step down.

Councilmember Leighan noted that documents had been delivered to him during the break and appeared to address an environmental cleanup issue. He requested clarification of the action before the council. The Mayor verified that the action was to approve or not approve a professional services agreement for the first phase of engineering and architectural services for the Waterfront Park, said phase to include special testing services to determine if any contaminants existed in the on-site soil, ground water, and slough sediments.

Councilmember Leighan clarified that any cleanup action, if needed, would be planned for after work of phase one had been completed.

CONNECTED: SEE 5-7-01  
MINUTES

The Mayor called for a short break, then resumed the meeting.

Jim Ballew, Parks and Recreation Director, introduced the topic, noting the contract had been divided into phases as earlier clarified. The completion date for performing phase one was August 31. If phase two were then commenced, work would be completed within nine months, by May 2002. The staff recommendation was to proceed with approval of the contract as revised.

Larry Wade of Hammond, Collier, Wade Livingstone, stated this structuring of the contract would not delay the overall timeframe of the park. It had always been anticipated that the soils testing would be done and reviewed before proceeding to the design stage; the difference now was that in the contract the work was clearly broken out into two stages.

Councilmember Smith asked about page 28 of the Phase II study about DOE requiring the site to be monitored for one year. Mr. Wade responded that monitoring would be required under any cleanup scenario. The type of cleanup and monitoring needed, if any, would depend on what was found on the site.

Kirk Bailey, engineering geologist with Geotechnical & Environmental Services, Inc., stated he was the author of the study being referred to and its predecessor study. He noted that he was not involved in the current contract, but was in attendance this evening to answer questions about those studies. He noted that the test result being discussed was hydrocarbon in a particular area of the site. It was later retested and came out below action level, which was not uncommon. DOE often did want a site monitored over time but that monitoring was not inclusive; it did not require that other actions stop until the results of monitoring were known.

Councilmember Dierck stated her reading of the study was that additional testing of groundwater was recommended for one year. Mr. Bailey responded that it was his professional opinion that the hydrocarbon levels in the park area were not significant enough to be of concern to the project. A significant amount of exploration had already been done and there was no evidence of buried tanks, piping was clean, etc. When dealing with gas station sites after contamination cleanup, DOE required that monitoring take place over a period of time to ensure that the cleanup was successful. It was not certain that any cleanup would be required because the levels were so low. Such low levels of contaminants would not affect the city's proposal for the site.

Councilmember Dierck stated she would be supporting denial of the recommended action because the city should be working with DOE under the Model Toxin Control Act and there was grant money available for site cleanups. Her other concerns were: pharmaceutical bottles found in test pit 2, a letter from the Tribes enumerating their concerns on water sampling, runoff from the proposed parking lot, and sediment being stirred up in the slough.

Mr. Wade stated that the contract anticipated review of any cleanup plan with DOE as they had the final authority. No provision had been made for monitoring and testing for a year's time. The cost for each analytical sample was \$600.

Councilmember Soriano asked about the contamination assessment shown in Table 8, page 24 of the Phase II study. Mr. Bailey responded that no listing in a column meant that no level for that particular chemical had been developed on Ecology's cleanup list. Councilmember Soriano asked if, in Mr. Bailey's judgment, the chemicals listed in the third column posed a threat. Mr. Bailey said they did not.

Councilmember Brennick asked about the depth of the test sites. Mr. Wade stated the holes had been bored to 20 to 30 feet. Councilmember Brennick asked about the possibility of uncovering contaminants during testing in the areas, which had not previously been tested. Mr. Bailey noted that the site had a history of industrial use so it was possible that as the work progressed

pockets of contaminated material would be encountered. It was his professional opinion that the levels of contaminants would not be significant and it was that opinion that supported the purchase of the property originally. Following a phased approach as proposed limited risk and allowed use of the property at a minimum cost. The environmental acts were designed to protect human health and groundwater. No evidence of contamination was found during the earlier testing. Some hydrocarbons had been found because the site had been a gas station and some pharmaceuticals had been found because part of the site had been used as a garbage dump. There were ways to mitigate both of those situations. He emphasized that the city was not out of compliance with any state regulations and there was no urgency. If the study identified some contaminants along the proposed sewer route, for instance, those would be analyzed so the city would know what it would be exposing itself to and so it could mitigate and control its expenses. If one route appeared costly, another route could be chosen and soil at the first location left in place. Many contaminants could be left in place. DOE would require a removal plan for some contaminants, such as highly cancerous ones.

Councilmember Brennick asked if many copies of the environmental reports had been picked up by the community. Ms. Becker responded that one person had checked out the reports.

Councilmember Smith mentioned the levels on Page 24 of 100 parts per million. Mr. Bailey said council would want to understand what each chemical did – how active it was, if it moved or stayed put. Some things that stayed glued to the soil could simply be covered and not be exposed to anyone. Many of the chemicals listed in the chart did not exceed any levels and did not need to be cleaned up. The Department of Ecology had not deemed them a risk.

Mr. Wade noted that the whole site would be considered for testing, both the upland area and the sediment deposits in Ebey Slough.

The Mayor opened the topic to public comment.

Bruce Tipton, 6308 100<sup>th</sup> Street NE, opposed the recommended action stating studies of groundwater flows needed to be tested over four seasons. Also there was a saltwater influence which might affect contaminants that were otherwise glued to soil.

Mr. Bailey responded that what was being measured was levels of contaminants and there was no advantage in monitoring something over four seasons. If the intent was to look at how things changed, then a site could be monitored over time, but that monitoring would not help the city prepare a plan to fix something or remove something. In this instance, monitoring groundwater for one year would not give more useful information than could be derived from looking at it once and knowing what the levels were. Quarterly monitoring was a common practice where there were hydrocarbons in the groundwater. He expected the project could go forward as anticipated. Even then, there might be locations the city would want to monitor for a period of time to establish the status quo. There were many such sites in the county. Mr. Weed clarified that it was not necessarily essential that monitoring take place for 12 months before site development occurred but could be done following development to create a database. Mr. Bailey concurred.

Since Mr. Bailey had offered his testimony as a professional and an expert, Mr. Weed asked for information on his education, training and background in this area. Mr. Bailey replied that he obtained a B.S. in Geology in 1976 and had advanced studies from the University of Michigan and Davis California. He worked as a groundwater hydro-geologist for a corporation in California and with a consulting firm in Kirkland. Since 1988 he had been an Engineering Geologist for Snohomish County Public Works and had been responsible for setting up their environmental risk assessment criteria for the purchase of properties. He had completed thousands of studies for Snohomish County. In addition to that work, in 1991 he formed his consulting firm, Geotechnical & Environmental Services, Inc.

CORRECTED: SEE 5-7-01  
MINUTES

Councilmember Bartholomew mentioned the tidal changes in the slough and determining the source of possible upstream contaminants. Mr. Wade responded that it might not be possible to determine the source; the city was only bound to determine the level.

Councilmember Smith asked about the time of year for testing. Mr. Bailey explained that that was an important question on many sites but this property had a high water table and it was high year 'round. Because of that, it made little difference one season to another.

Councilmember Dierck mentioned page 16 of Study 1 regarding imported fill. Mr. Wade noted that the proposed improvements were not located in that area.

Ken Baxter, 1895 Liberty Lane, supported the proposed study.

Otto Herman, Jr., supported the proposed study, noting there were constraints on how the city could use the grant money. Regarding environmental issues, it had been his experience that it was better to contain rather than disturb.

There being no one further wishing to speak, the Mayor closed the public comment portion of the topic.

Councilmember Soriano referred to Study II, Summary and Conclusion 6.3. Mr. Bailey explained the type of soil in the area and said it was unlikely that contaminants would be found there.

**MOTION** by Dierck, second by Brennick, to proceed with Task 1 and to do testing of groundwater for a period of 12 months. On roll call vote Dierck and Brennick voted aye; all others voted nay; motion failed (2-5).

**MOTION** by Pedersen, second by Bartholomew, to approve the revised agreement and authorize the Mayor to sign the contract for professional services with Hammond, Collier, Wade and Livingstone in the amount of \$317,250, conditioned upon no action being taken on Task II of the contract until council had reviewed the results of Task I. On roll call vote Dierck and Smith voted nay; all others voted aye; motion carried (5-2).

### **New Business**

Councilmembers agreed to re-order the agenda and deal with the annexations next.

#### 3. Loop Annexation; 10% Notice of Intention to Annex; PA 0103018.

Ms. Hirashima gave the staff presentation on the Loop and Robinett annexations together and enumerated the difficulties of the various expansion options. No annexation covenants existed from surrounding areas and there had been almost no interest from neighbors who were contacted by mail.

Councilmember Soriano asked about the Police Department's ability to absorb the area. Chief Carden responded that the area could be policed, but the effect of annexations was cumulative. A full workforce study had not been done because this was only at the 10% level, but a study needed to be done to project the workforce implications.

**MOTION** by Pedersen, second by Brennick, to accept the Loop 10% Notice of Intent and establish the area for circulation of the 60% petition as the area set forth in the original petition, said annexation to be subject to the city's bonded indebtedness, comprehensive plan and zoning. Motion carried (7-0).

4. Robinett Annexation; 10% Notice of Intention to Annex; PA 0102006.

**MOTION** by Leighan, second by Bartholomew, to accept the Robinett 10% Notice of Intent and establish the area for circulation of the 60% petition as the "Robinett Annexation Expanded Boundary" as recommended by staff, said annexation to be subject to the city's bonded indebtedness, comprehensive plan and zoning. Motion carried (7-0).

1. Supplemental Agreement No. 6; Skillings Connelly; R9701 – State Avenue (116<sup>th</sup> Street – 136<sup>th</sup> Street) Road Improvements Project.

Mr. Winckler gave a brief overview of the agenda materials, noting the contract would review the various options for the detention ponds in detail: whether the size should be increased, decreased or the two ponds – 128<sup>th</sup> and 115<sup>th</sup> – be combined. Staff expected the recommendations from this study to result in savings that would far exceed the \$12,000 cost.

**MOTION** by Dierck, second by Brennick, to approve Supplement No. 6 with Skillings Connelly in the amount of \$12,580.97 for road improvements along State Avenue from 116<sup>th</sup> Street to 136<sup>th</sup> Street. Motion carried (7-0).

2. Annual Telemetry Contract for Repair and Maintenance for Water and Wastewater Systems.

**MOTION** by Bartholomew, second by Pedersen, to renew the water and wastewater annual contract for telemetry repair and maintenance with Systems Interface, Inc for \$14,275 as per the agreement, with the option of renewing the contract annually as long as the city was satisfied with the performance and cost, and authorize the Mayor to sign the contract. Dierck voted nay; all others voted aye; motion carried (6-1).

5. SR528 Columbia to 55<sup>th</sup> Avenue Phase 1 Consultant Contract; Perteet Engineering, Inc.

**MOTION** by Dierck, second by Smith, to extend the meeting to 11:05 p.m. On roll call vote, Leighan, Pedersen and Bartholomew voted nay; all others voted aye; motion carried (4-3).

Mr. Carter gave the staff presentation. Council discussion focused on whether there was back alley parking for the homes that would lose street parking and whether the number of travel lanes should be expanded to four as originally recommended by staff.

The Mayor called for public comments.

Jeff Seibert asked about the crosswalk to the nature park.

**MOTION** by Smith, second by Dierck, to delay action on this item until the May 7 meeting. Motion carried (7-0).

## Legal

1. P.U.D. easement revision

**MOTION** by Dierck, second by Brennick, to extend the meeting to 11:10 p.m. Leighan, Pedersen and Bartholomew voted nay; all others voted aye; motion carried (4-3).

Mr. Weed explained this easement allowed the P.U.D. to encroach 3 feet onto Strawberry Fields for placement of their tie-down. If the city needed to use the property in the future, including for road widening purposes, the tie-down would be moved at the P.U.D.'s expense.

**MOTION** by Bartholomew, second by Smith, to approve the P.U.D. Easement as proposed. Dierck voted nay; all others voted aye; motion carried (6-1).

### **Ordinances & Resolutions**

1. A Resolution of the City of Marysville declaring certain items of personal property to be surplus and authorizing the sale or disposal thereof.

**MOTION** by Bartholomew, second by Soriano, to approve Resolution 2032. Motion carried (7-0).

### **DISCUSSION ITEMS**

None.

### **INFORMATION ITEMS**

None.

### **ADJOURN INTO EXECUTIVE SESSION**

Mr. Weed noted there were two real property items to be discussed in Executive Session and they were time sensitive; the opportunities would not be available if delayed until the next meeting.

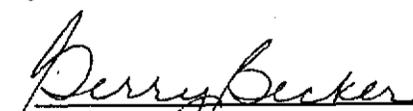
**MOTION** by Brennick, second by Dierck, to extend the meeting to 11:30 p.m. Leighan voted nay; all others voted aye; motion carried (6-1).

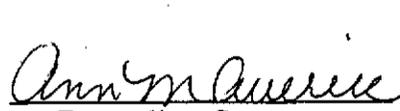
### **ADJOURN**

Council reconvened into regular session, took no further action, and adjourned at 11:30 p.m.

Accepted this 7th day of May, 2001.

  
 Mayor

  
 City Clerk

  
 Recording Secretary

**Verbatim Excerpt from  
April 9, 2001  
Marysville City Council Meeting**

**Current Business:**

**Mayor Weiser:** Under current business, there was a motion last week to continue the discussion on the waterfront park until the 9<sup>th</sup>. As you can see, Councilmember Pedersen is not here tonight. Parks & Rec Director Jim Ballew was not able to be here tonight, and after discussion with Public Works or after Council discussion, Public Works staff approached me with the idea of looking at phasing that study to do the environmental work first, and then come back, you know bring that back, and then address the City Council with that and then go ahead or then proceed as directed beyond that. So that's why it is not on the agenda tonight, and it will be back on the 23<sup>rd</sup> for you to consider at that time, and we'll have the change in the contract for you as well.

Under new business, item number one. NormaJean, I'm sorry.

**Dierck:** Several things to respond to that. What in the contract are you talking about that we changed.

**Mayor:** Nothing in the contract other than looking at the idea of separating the environmental review; doing that first. That part of it that's contained in the contract, and then reviewing that with Council, and then perhaps after that going forward with the balance of it. Because that environmental review may or may not change, you know, the possible design of the park.

**Dierck:** Which review are you talking about?

**Mayor:** That was included in that contract that was before us last week.

**Dierck:** I, I don't feel comfortable about this, and the reason I don't is because the Council voted to table it to tonight's meeting, and it wasn't a good feeling when I found out that it wasn't on the agenda, and then when I picked up the packet and it wasn't on there, I mean...why does the Council make certain decisions and it doesn't transpire that way. And, also when Jim Ballew was at the last meeting, he state that he wouldn't

be here, and we knew that, and it was all right for Robin Nelson to go ahead and be here tonight for that meeting.

Mayor: I know all those were said, and that was the direction of the City Council, but because of Donna not being here, and again, I think Jim, along with Robin has some good input to give to the Council as to that, and for the other reason of changing, looking at the possibility of phasing that contract is why we held it off to the next meeting.

Dierck: Is that written anywhere that you have the power to do that, Dave, if one Council person isn't here, to go ahead and go against what the Council voted on or for any reason go ahead and vote against, you see, I know that in your description it talks about, that you have the power to set the agenda. However, is it written in there, that you have the power to go against what the Council voted on at the previous meetin, to have it at tonight's meeting.

Mayor: I don't recall any place where it says, you know, that in exactly the terms that you stated it, Norma Jean. If we'd gone ahead tonight, and with one Councilmember missing, if there was a tie vote, it would be brought back up again or could be brought back up again. It could be asked for reconsideration with a Councilmember missing; whether it was a tie vote or whether it was six to zero or what ever. So, you know, just for those reasons, and I think it is appropriate to do that. If I've overstepped my bounds to you, then I apologize, but I still think it is appropriate to do that. Looking at our agendas for tonight, and the next few weeks, and with the very real possibility that it will be brought up again on the 23<sup>rd</sup>.

Dierck: And that's really something that a Councilperson has to take the risk of if they are not at a particular Council meeting, and I still don't that's good grounds not to have it on tonight's agenda. And, tonight would have been a beautiful time to put it on there; look how thin our agenda is. There could have been a lot of discussion on it. We've had a lot of different Council meetings where the agendas are like this thick and there are like four or five important issues, and we haven't had time to have good discussion for them. So, I don't feel that it is right that it was handled that way.

Mayor: Okay, Suzanne.

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Smith: Well, my issues are somewhat along the same line but not exactly. When I first saw that it wasn't on here, I was kind of upset, and then after I started reading, I was somewhat relieved because it gave me more time to actually go over the information and not have it be in a hurry to read it. Now I will have time to read it. It does sound. You know I hate to bring it up, because I feel like it's going to go the way I had hoped it would go, that we're going to do an evaluation, environmental assessment before we proceed on anything. And that was kind of the direction I hoping we would go, but, if there was a direction of the Council, and what if it was a situation that was more, that, I don't know. Maybe a call would have been good to see what, you know, the Councilmembers felt to make sure you don't get put in the hot seat right here, and that we're aware of what's going on. We don't have to harbor resentments or bad feelings.

Brennick: Yeah, I also had some concerns, and um, of course, I've been there a couple of times since I've been on the Council. This tie vote thing, and of course, then you break the tie, and as you know, we've talked about this before on the Downtown street widening thing, and sometimes you are not able to bring it up at the next meeting, and then it becomes a dead issue. I guess my other question is: Is this going to become a standard practice for all Council people, that if one of us can't get to a meeting that we can pull it from an agenda and table it so that Council person can be here? You and I have had our conversations, and I've made the statement that if I'm not here, you know, put it on the agenda. There's a Council there that majority rules. They'll vote, and they'll move on. And, I guess, observing as a fifteen month old Council person, I'm not excited about doing business this way either. It doesn't seem fair, but everybody has their opinions so I guess we'll possibly be talking about this kind of way of doing business maybe at the retreat.

Mayor: Well, I don't want to leave you with the impression that Donna asked me to pull it off the agenda. She told me that she wasn't going to be here. I asked her if she, if it was a tie vote if she wanted me to break the tie, and she said yes and she told me how she would vote. However, this is an issue that requires the direct expenditure of money, and there is some question about whether I would have the ability to break that tie. So, given that, and the fact that if there was a tie, or depending on how the vote came out, it was more

than likely going to be brought up again. And, with Jim not being here, even though he said that was okay that Robin would be here, with Jim not here, that's why I went ahead and pulled it off. As to your question whether this was going to be an ongoing practice, in nine plus years, I can only think of one or maybe two other times where it has happened; where something has been pulled off when the Council has set up a specific date or we have not made a specific date. Now maybe I'm wrong on the recollection; but as to it being a forthcoming practice, no.

Brennick: So my third comment is: If there is something that we want to vote on and we are not going to be here that evening because of for some other reason, would we just contact you and let you be aware that we will not be here; and could you then remove that from the agenda for that evening.

Mayor: I think if we had similar circumstances, that that's a possibility. But, Suzanne raised a valid point; calling around to different Councilmembers; and I'm sorry I interrupted you.

Brennick: That's okay. That's all, thanks.

Dierck: When this type of action happens, and this is not the first time it has since the beginning of this year. I feel no longer that this is a Council meeting. And...the vote issue of Donna Pedersen is here..not to me..has no validation whatsoever. I mean, it sounds like the votes were already counted. To looking for is there a possibility of the Mayor making a tie vote or not, and I think that this is pretty ludicrous that this thing even happened. Plus some citizens might have thought about coming to the meeting tonight because when they were here last week, they had all well good intention that this was going to be put on the agenda tonight. Do all the Councilmembers have copies of Phase I and Phase II as of now?

Smith: I do.

Dierck: Do you mind? John?

Soriano: \_\_\_\_\_(couldn't hear his response)

Dierck: Jim.

Brennick: I've got it, but it was given to me just recently.

Dierck: Phase I and Phase II?

Brennick: Yes.

Dierck: How about you, Shirley?

Bartholomew: I'm not prepared to discuss it tonight.

Dierck: You haven't been given a copies since you've been on the Council?

Bartholomew: I have a copy. I'm not prepared to discuss it .....

Dierck: That's not my question, if you want to discuss it or not.

Mayor: I brought this up.

Dierck: The reason I'm asking is so all Councilmembers can get copies before the next meeting, and I also would like to see any interested people before the next meeting on the 23<sup>rd</sup>, the fourth Monday; also to have those copies available to the public because they are public information to help them to see what type of decision or what type of discussion they would like to have and interact with the Councilmembers here. So, and that's a lot of information. One's like this, one's like that, Phase II to have them sitting there by the door. Do you see where I'm going with agendas. So I would like to see them available as soon as possible at City Hall. Perhaps, I don't want to tell the press what to do but perhaps they could put something in there that they will be available at City Hall if this will turn out tonight that that can happen so that they can read them well ahead of time because they are very large.

Mayor: Okay, Michael.

Leighan: I guess a question for staff. I have seen the documents and they are indeed very large. Um, I don't know how many copies of those we got when we initially got the copies but if somebody is going to have to take and tear those apart and make copies that may or may not be used; it seems like that's a tremendous amount of staff time. I believe we've had a request at the last meeting by an individual that wanted a copy of them, and was told that there is a way to obtain them. I don't know if that has occurred or not. I know

that I have the synopsis sheet that was provided, I believe, Larry Wade's office.

Swenson: There is a way to obtain the report by coming to City Hall; filling out a public records request; and if you want to just view it there is no cost. If you want copies, I believe it would probably be, if you did fifteen cents a copy which we standardly do, it would probably be some where in the \$50-60 range. We don't have additional. I mean we have like probably, we have a copy at our office. I believe that there is a copy down in Planning Department in their files, and Parks Department has a copy. But, we don't have any additional copies made at this time.

Leighan: Have we had anybody take the time and come down and read it at City Hall?

Swenson: I believe that the editor of the Globe came down and looked at it, and spent some time going through the document.

Leighan: So there has been opportunity for the public to view the document and request it if they wanted to spend the money for the copies.

Swenson: Yes, in fact we actually went through our public records requests, and there had been a request for that document back in 1999, and it had been, we went ahead and issued that request.

Leighan: I know that we had an issue here several months ago on the Lakewood/Lake Stevens school mitigation fees where a couple of Council members were not present, and it was on the agenda, and the Council on their own then pulled it until the entire Council could be present to lead into the discussion for pretty much the same reason that we seemed to abuse the reconsideration on a fairly regular basis here, and that kind of sets the ship in motion one way, and then two weeks later or a week later maybe changes that direction. So there may be some other way we could've had this on the agenda with a request to postpone or delay it to the next meeting. I personally don't have a problem with the fact that it's not here this week, and I applaud the staff for looking at some options.

Mayor: Okay, thank you. Last two comments. Suzanne.

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Smith: I was thinking, is there a way, if we had, have copies is there do we check them out. I know we have in the past in Planning. The Planning Department in the past have done some things where they had items you could check out.

Swenson: We have done that in the past. Allowed check-outs.

Smith: Well maybe if someone really wants to view it in their own comfort. You know, one or two day checkout. I don't know how long you usually give those for.

Mayor: Okay, NormaJean.

Dierck: I think a lot of this is a mute point because how can anybody have come down to City Hall to review these when we are just talking tonight that they are indeed public information. That was a question that I asked at the last meeting and it wasn't answered. Our attorney was going to research that for us. So here we are tonight, knowing that they are, and going at City Hall and sitting there and trying to read Phase I and Phase II at City Hall. I really don't see how that's going to work, and I really don't see how one individual which is the press who went down to read at City Hall can be counted as for the public. So, I would like to see several copies available for the citizens in case anybody is interested to have them. Because most people don't have \$50 or \$60 to copy reports, and I don't think the City has that big of a financial burden not to be able to do that for the public. That's who we work for.

Swenson: Just a clarification. There has been a determination made on that document, actually back in 1999 that it was a public record when we had a request for that document. And, we were not aware of that until we went back into the records to look through our public record disclosure file. And so they have been, a determination made, and it was made following some lengthy discussion about the purchase. If we didn't mention that at the last meeting, it was because we had basically forgotten it because it was so long ago. If we had had knowledge that that would have come up, we would have reviewed our files to see if it had been determined to be a public record. You know standard practice is that when people come in, they have to fill a form out or even if they can tell us verbally what they are looking for, and then we'll

make a determination whether it's a public record or not. But just for clarification.

Mayor: Okay, thank you.

Dierck: What made them public in 1999, Mary?

Mayor: It's really time to move on.

Dierck: One question I like: What made them public information in 1999?

Mayor: Wait a minute. You don't have the floor. There are others that have asked for the floor.

Dierck: She was answering my question. I still have the floor. About the documents, about having them at City Hall, and when they became public information was my question.

When did they become public, Mary? Or, why did they become public in 1999? What kicked in? Was it because the property was already purchased? Is that what made them public?

Swenson: You know my recollection is that that is what most likely have made them public. I know that there have been discussions on whether there was going to be follow up study and who had actually financed the document, and whether that made a difference. It was a long time ago; it was 1999. When you have a records request like that, especially when it is regarding a real estate issue, we always spend some time going through and making that determination. And, Grant you can probably assist with that.

Weed: What makes a record a public document or not is depending upon whether it falls into any of these specifically *enumerated* exemptions in RCW 42.17.310 public records act. But when a request is made for a public record, the job of staff and my job is to look at the state statute, determine whether the record falls into any of the exemptions, and if it does, then the record is not public and can be withheld. And, if it falls outside the exemptions or doesn't fit into an exemption, then it is a public record. There are a lot of records that get requested to the City that decisions haven't been made on whether they are a public record until a request is made. And, at that point in time, when a records request form is

filled out, the City Clerk really takes a look at, and if there is no question about it, the documents are provided, and if there is a question, there's usually some consultation that goes on, oftentimes with me, and then a decision is made. And, in this case, I had asked Mary today to go back into our records files to see if any requests for those records had been made in the past, and neither one of us had remembered that there had been but she went back and went through all of the requests from the time the City had acquired the property, and lo and behold there was one request that was made in late 1999 and that request was fulfilled. So, at that point in time when it was released by the City from and after that date, it is a public record.

Mayor: Shirley.

Bartholomew: I have a question of Grant. If we are to pass out \$50 or \$60 copies to the public, isn't that a giving of public money?

Weed: Yes.

Bartholomew: And, unconstitutional. We can't do it.

Weed: That's right.

Bartholomew: Thank you.

Mayor: Jim.

Brennick: Yeah, I have a question. When we as Council people check that out, those documents, are we on that list also? The list or the person that Mary said in 1999?

Swenson: No, when Councilmembers ask for information, it is given during the course of business for what Council needs to have in order to make decisions. And, just a follow up to what Grant has said; we run all the records requests through the City Clerk's office so that it's run through one person; somebody that kind of takes a look to see what should be released, and what possibly shouldn't be and then consults with the attorneys.

Brennick: So, if were to remove that from down there and take those files and those documents, we are not on that list. Is that correct?

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Swenson: You would not be in our public disclosure file, no.

Brennick: Thank you.